

1 Honorable Barbara J. Rothstein
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14 UNITED STATES DISTRICT COURT FOR THE
15 WESTERN DISTRICT OF WASHINGTON
16 AT SEATTLE
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19 LEMART GLENN,
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22 Plaintiff,
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24 v.
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26 ROBERT WILKIE, Secretary of UNITED
27 STATES DEPARTMENT OF VETERANS
28 AFFAIRS, on Behalf of Department of
Veterans Affairs, agency,
Defendant.

29 NO. C18-1162 BJR
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32 ~~PROPOSED~~ AMENDED
33 STIPULATED PROTECTIVE
34 ORDER
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37 1. PURPOSES AND LIMITATIONS
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40 Discovery in this action is likely to involve production of confidential, proprietary, or private
41 information for which special protection may be warranted. Accordingly, the parties hereby stipulate
42 to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge
43 that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all
44 disclosures or responses to discovery, the protection it affords from public disclosure and use
45 extends only to the limited information or items that are entitled to confidential treatment under the
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1 applicable legal principles, and it does not presumptively entitle parties to file confidential
2 information under seal.

3 **2. CONFIDENTIAL MATERIAL**

4 2.1 "Confidential" material shall include the following documents and tangible things
5 produced or otherwise exchanged: (1) medical records and medical information, (2) personnel and
6 employment-related records of any current or former government employee and/or military
7 employee, (3) tax records; and (4) any other records whose release without a protective order would
8 potentially violate the Privacy Act, 5 U.S.C. § 552a.

9 2.2 "Attorney's eyes only" material is a subcategory of "confidential material" which has the
10 additional limitations and conditions that such material shall be disclosed only to legal counsel in
11 this action and counsel's staff, as well as process servers, if necessary. "Attorney's eyes only"
12 material shall include home addresses, home and personal telephone numbers, as well as any other
13 home or personal contact information for current or former employees of the Department of
14 Veterans Affairs, with the exception of Plaintiff. The parties agree to Paragraph 2.2 to resolve a
15 dispute as to whether Defendant can be compelled to produce personal contact information of
16 current and former employees of the Department of Veterans Affairs. This paragraph further limits
17 Paragraph 4.2 (b).

18 **3. SCOPE**

19 The protections conferred by this agreement cover not only confidential material (as defined
20 above), but also (1) any information copied or extracted from confidential material; (2) all copies,
21 excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations,
22 or presentations by parties or their counsel that might reveal confidential material.

1 However, the protections conferred by this agreement do not cover information that is in the
2 public domain or becomes part of the public domain through trial or otherwise.
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4 4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

5 4.1 Basic Principles. A receiving party may use confidential material that is disclosed or
6 produced by another party or by a non-party in connection with this case only for prosecuting,
7 defending, or attempting to settle this litigation. Confidential material may be disclosed only to the
8 categories of persons and under the conditions described in this agreement. Confidential material
9 must be stored and maintained by a receiving party at a location and in a secure manner that ensures
10 that access is limited to the persons authorized under this agreement.
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12 4.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered by the
13 court or permitted in writing by the designating party, a receiving party may disclose any
14 confidential material only to:
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16 (a) the receiving party's counsel of record in this action, as well as employees of counsel to
17 whom it is reasonably necessary to disclose the information for this litigation;
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19 (b) the officers, directors, and employees (including in house counsel) of the receiving party
20 to whom disclosure is reasonably necessary for this litigation, unless the parties agree that a
21 particular document or material produced is for Attorney's Eyes Only and is so designated;
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23 (c) experts and consultants to whom disclosure is reasonably necessary for this litigation and
24 who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);
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26 (d) the court, court personnel, and court reporters and their staff;
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28 (e) copy or imaging services retained by counsel to assist in the duplication of confidential
material, provided that counsel for the party retaining the copy or imaging service instructs the
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1 service not to disclose any confidential material to third parties and to immediately return all
2 originals and copies of any confidential material;

3 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
4 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A),
5 unless otherwise agreed by the designating party or ordered by the court. Pages of transcribed
6 deposition testimony or exhibits to depositions that reveal confidential material must be separately
7 bound by the court reporter and may not be disclosed to anyone except as permitted under this
8 agreement;

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10 (g) the author or recipient of a document containing the information or a custodian or other
11 person who otherwise possessed or knew the information.

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13 **4.3 Filing Confidential Material.** Before filing confidential material or discussing or
14 referencing such material in court filings, the filing party shall confer with the designating party, in
15 accordance with Local Civil Rule 5(g)(3)(A), to determine whether the designating party will
16 remove the confidential designation, whether the document can be redacted, or whether a motion to
17 seal or stipulation and proposed order is warranted. During the meet and confer process, the
18 designating party must identify the basis for sealing the specific confidential information at issue,
19 and the filing party shall include this basis in its motion to seal, along with any objection to sealing
20 the information at issue. Local Civil Rule 5(g) sets forth the procedures that must be followed and
21 the standards that will be applied when a party seeks permission from the court to file material under
22 seal. Failure to satisfy this requirement will result in the motion to seal being denied, in accordance
23 with the strong presumption of public access to the Court's files.

1 5. DESIGNATING PROTECTED MATERIAL

2 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or non-
3 party that designates information or items for protection under this agreement must take care to limit
4 any such designation to specific material that qualifies under the appropriate standards. The
5 designating party must designate for protection only those parts of material, documents, items, or
6 oral or written communications that qualify, so that other portions of the material, documents, items,
7 or communications for which protection is not warranted are not swept unjustifiably within the ambit
8 of this agreement.

9 Mass, indiscriminate, or routinized designations are prohibited. Designations that are shown
10 to be clearly unjustified or that have been made for an improper purpose (e.g., to unnecessarily
11 encumber or delay the case development process or to impose unnecessary expenses and burdens on
12 other parties) expose the designating party to sanctions.

13 If it comes to a designating party's attention that information or items that it designated for
14 protection do not qualify for protection, the designating party must promptly notify all other parties
15 that it is withdrawing the mistaken designation.

16 5.2 Manner and Timing of Designations. Except as otherwise provided in this agreement
17 (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or ordered,
18 disclosure or discovery material that qualifies for protection under this agreement must be clearly so
19 designated before or when the material is disclosed or produced.

20 (a) Information in documentary form: (e.g., paper or electronic documents and
21 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial proceedings), the
22 designating party must affix the word "CONFIDENTIAL" to each page that contains confidential
23 material. If only a portion or portions of the material on a page qualifies for protection, the
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1 producing party also must clearly identify the protected portion(s) (e.g., by making appropriate
2 markings in the margins).

3 (b) Testimony given in deposition or in other pretrial proceedings: the parties and any
4 participating non-parties must identify on the record, during the deposition or other pretrial
5 proceeding, all protected testimony, without prejudice to their right to so designate other testimony
6 after reviewing the transcript. Any party or non-party may, within fifteen days after receiving the
7 transcript of the deposition or other pretrial proceeding, designate portions of the transcript, or
8 exhibits thereto, as confidential. If a party or non-party desires to protect confidential information at
9 trial, the issue should be addressed during the pre-trial conference.

10 (c) Other tangible items: the producing party must affix in a prominent place on the
11 exterior of the container or containers in which the information or item is stored the word
12 "CONFIDENTIAL." If only a portion or portions of the information or item warrant protection, the
13 producing party, to the extent practicable, shall identify the protected portion(s).

14 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate
15 qualified information or items does not, standing alone, waive the designating party's right to secure
16 protection under this agreement for such material. Upon timely correction of a designation, the
17 receiving party must make reasonable efforts to ensure that the material is treated in accordance with
18 the provisions of this agreement.

19 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

20 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
21 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
22 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens,
23 or a significant disruption or delay of the litigation, a party does not waive its right to challenge a

1 confidentiality designation by electing not to mount a challenge promptly after the original
2 designation is disclosed.

3 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute regarding
4 confidential designations without court involvement. Any motion regarding confidential
5 designations or for a protective order must include a certification, in the motion or in a declaration or
6 affidavit, that the movant has engaged in a good faith meet and confer conference with other affected
7 parties in an effort to resolve the dispute without court action. The certification must list the date,
8 manner, and participants to the conference. A good faith effort to confer requires a face-to-face
9 meeting or a telephone conference.

10 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court intervention,
11 the designating party may file and serve a motion to retain confidentiality under Local Civil Rule 7
12 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of persuasion in any such
13 motion shall be on the designating party. Frivolous challenges, and those made for an improper
14 purpose (e.g., to harass or impose unnecessary expenses and burdens on other parties) may expose
15 the challenging party to sanctions. All parties shall continue to maintain the material in question as
16 confidential until the court rules on the challenge.

17 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER
18 LITIGATION

19 If a party is served with a subpoena or a court order issued in other litigation that compels
20 disclosure of any information or items designated in this action as "CONFIDENTIAL," that party
21 must:

22 (a) promptly notify the designating party in writing and include a copy of the
23 subpoena or court order;

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this agreement. Such notification shall include a copy of this agreement; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the designating party whose confidential material may be affected.

8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a receiving party learns that, by inadvertence or otherwise, it has disclosed confidential material to any person or in any circumstance not authorized under this agreement, the receiving party must immediately (a) notify in writing the designating party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the protected material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this agreement, and (d) request that such person or persons execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

When a producing party gives notice to receiving parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to modify whatever procedure may be established in an e-discovery order or agreement that provides for production without prior privilege review. The parties agree to the entry of a non-waiver order under Fed. R. Evid. 502(d) as set forth herein.

10. NON TERMINATION AND RETURN OF DOCUMENTS

Within 60 days after the termination of this action, including all appeals, each receiving party must return all confidential material to the producing party, including all copies, extracts and summaries thereof. Alternatively, the parties may agree upon appropriate methods of destruction.

Notwithstanding this provision, counsel are entitled to retain one archival copy of all documents filed with the court, trial, deposition, and hearing transcripts, correspondence, deposition and trial exhibits, expert reports, attorney work product, and consultant and expert work product, even if such materials contain confidential material.

The confidentiality obligations imposed by this agreement shall remain in effect until a designating party agrees otherwise in writing or a court orders otherwise.

IT IS SO STIPULATED. THROUGH COUNSEL OF RECORD

DATED this 4th day of December, 2019.

/s/ Richard H. Wooster
RICHARD H. WOOSTER
Attorney for Plaintiff

DATED this 4th day of December, 2019.

/s/ Patricia D. Gugin
PATRICIA D. GUGIN
Attorney for Defendant

ORDER

PURSUANT TO STIPULATION, IT IS SO ORDERED.

IT IS FURTHER ORDERED that pursuant to Fed. R. Evid. 502(d), the production of any documents in this proceeding shall not, for the purposes of this proceeding or any other federal or state proceeding, constitute a waiver by the producing party of any privilege applicable to those documents, including the attorney-client privilege, attorney work-product protection, or any other privilege or protection recognized by law.

DATED this 4 day of December 2019.

Barbara J. Rothstein
The Honorable Barbara J. Rothstein
United States District Court

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the United States District Court for the Western District of Washington on [date] in the case of *Glenn v Wilkie*, Case No. C18-1162 BRJ. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the Western District of Washington for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed:

Printed name:

Signature: _____

For more information, contact the National Institute of Child Health and Human Development (NICHD) at 301-435-0911 or visit the NICHD website at www.nichd.nih.gov.